

Exhibit S

In the Matter Of:

Williams v.

Big Picture

James Dowd

November 13, 2018

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Min-U-Script® with Word Index

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IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LULA WILLIAMS, et al.,)
Plaintiffs,)
vs.) No. 3:17-cv-00461
BIG PICTURE LOANS, LLC, et al.,)
Defendants.)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

14 The videotaped deposition of JAMES V. DOWD
15 taken before Melanie E. Kubiak, Certified Shorthand
16 Reporter, at 180 North LaSalle Street, Suite 2800,
17 Chicago, Illinois, commencing at 9:05 a.m. on the
18 13th day of November, 2018.

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1 A. Can you be more specific?

2 Q. Sure. Like, did you -- did Bellicose VI
3 provide parameters as to when Red Rock should make a
4 loan to a consumer?

5 A. They would provide analysis or guidance or
6 suggestions to the Tribe that -- you know, that the
7 analysis said maybe you want to add this criteria or
8 delete it. But that all would have been ultimately
9 approved by the co-managers of -- of either Duck Creek
10 or Red Rock.

11 Q. Were you involved in providing those
12 recommendations to the Tribe?

13 MR. DUROCHER: Object to the form.

14 BY THE WITNESS:

15 A. Yes, from time to time.

16 Q. Okay. How -- How were those recommendations
17 provided to the Tribe? Was it like a memo or an e-mail
18 you would send to the tribal managers?

19 A. There could have been a variety of different
20 ways, either e-mails or phone calls, in-person meetings
21 from time to time. And then there's also a more formal
22 approval process that I can't remember when that started
23 to go into place to document the -- the approvals and
24 compliance reviews and legal reviews.

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1 Q. Do you recall any time where the Tribe didn't
2 accept any -- Let me rephrase that.

3 Do you recall any times where the Tribe
4 wouldn't accept a recommendation made by Bellicose VI
5 for the Tribe about tribe lending business?

6 A. I can't recall specifically, but there were a
7 lot of instances over the years. And a lot of times I
8 wouldn't have been the one directly speaking with them
9 to make the recommendation.

10 Q. Okay. Who -- So at times, were you the one --
11 So I assume there were various people at Bellicose VI
12 who would have interacted with the Tribe --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes.

16 Q. And sometimes that would include you?

17 A. Yes.

18 Q. Who else would that include?

19 A. I would say virtually all of the employees at
20 the -- the Bellicose VI company at some time or other.

21 Q. So all of the employees at Bellicose VI would
22 have -- would have at some point potentially interacted
23 with the Tribe to make recommendations to the Tribe
24 about the lending business?

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1 A. And then -- since then, the -- you know, the
2 team has evolved and different people have been there.
3 So that was true at points in time, but the point people
4 would change from time to time.

5 Q. All right. Are you aware of anybody at the
6 Tribe who would deal with the software vendor?

7 A. I don't know.

8 Q. All right. So we have the loan application
9 and the credit report.

10 What -- Just remind me, what happens after
11 that point? Just -- What's the next step?

12 A. The -- There's a set of rules or criteria that
13 come up with an initial decision of whether to accept
14 the application or not. And if -- the application could
15 be declined at that point if they don't meet the credit
16 criteria that has been established by the Tribe or the
17 Tribe's businesses.

18 And then if the application is initially
19 accepted, there would be an initial offer that's
20 presented to the consumer. And then that would be
21 subject to additional verification and things before the
22 final approval process that happens at the office on the
23 reservation.

24 Q. Okay. So the consumer's loan application and

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1 MR. GUZZO: To be -- we should technically receive
2 something from you -- I think it's in ten days -- from
3 your receipt of the transcript that is line by line.

4 MR. DUROCHER: Okay. All right. Very good. We
5 will do that. Although it may be line by line, meaning
6 we say every line. But we'll -- we'll look at the --
7 the terms of the protective order and do everything we
8 can to comply with that. Very good.

9 MR. GUZZO: Thanks.

10 MR. DUROCHER: Okay. Thank you.

11 BY MR. ALBANESE:

12 Q. Where did we leave off? So there's -- Let me
13 just back up.

14 There's an initial acceptance -- some consumer
15 applications are rejected and then some are initially
16 accepted subject to further verifications --

17 A. Yes.

18 Q. -- is that correct, Mr. Dowd?

19 A. Yes.

20 Q. Okay. What -- What are some of those
21 verifications?

22 A. So I don't work specifically -- or haven't
23 worked specifically with the -- the groups that do those
24 verifications. Generally, verification of income and

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1 employment and account ownership.

2 Q. Okay. So verification of the consumer's
3 income, the consumer's employment, and then whether the
4 consumer owns the bank account; is that correct?

5 A. Yes.

6 Q. Then you said there are groups that do that.
7 What -- What do you mean by groups?

8 A. So there is a team on the reservation at the
9 tribe that does all of the review and approval of every
10 single loan that gets made by the -- the tribal lending
11 entities. So really it's up to them to -- you know, if
12 there's not sufficient information to get the -- you
13 know, that they're satisfied that the -- you know, that
14 they want to approve the loan. They could refer it --
15 they can either handle some things electronically
16 through e-mail correspondence with a customer or there's
17 a call center that the Tribe has a relationship with
18 that handles customer service and it can be done over
19 the phone.

20 Q. Okay. Call center that the Tribe had a
21 relationship with, is that located on the
22 tribe (inaudible)?

23 MR. DUROCHER: On the what?

24

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1 of a tribal team would conduct verifications of the
2 consumer's income employment and bank account ownership
3 information. Let's -- And they could do that via e-mail
4 or sometimes it would be -- they would use a call center
5 based in the Philippines to do that.

6 Is that a fair summary of your testimony?

7 MR. DUROCHER: Object to the form.

8 BY THE WITNESS:

9 A. I guess I'm not sure what fair means there,
10 but --

11 MR. DUROCHER: I object. His testimony -- He's
12 already testified to it. I think it's unfair to ask him
13 to summarize now what he's already testified to.

14 MR. ALBANESE: Sure.

15 BY MR. ALBANESE:

16 Q. Okay. So let's say that all the verifications
17 are approved. What happens next?

18 A. So there's a team at the Big Picture Loans
19 office and, you know, it would have been other lenders
20 in the past. But on the reservation, physically in the
21 office there, they are going through, checking to make
22 sure that all of those verifications were completed and
23 completed to their satisfaction, reviewing other, you
24 know -- I guess, make sure that the loan setup is

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1 correct and all that.

2 I -- Honestly, I don't work with that specific
3 process very closely. So I think it would be better
4 asked to somebody else.

5 But -- And then if all those requirements had
6 been met, then they would originate the loan from the
7 office in the reservation.

8 Q. What do you mean by that they would originate
9 the loan? They would -- what -- send a loan
10 agreement -- a proposed loan agreement to the consumer;
11 is that the next step?

12 A. Well, at that point, before -- you know,
13 before they were doing this final approval that one of
14 the requirements would obviously be a loan agreement
15 that's been signed before it could be originated --
16 approved and originated.

17 Q. So who -- how -- do you know how the
18 consumer's presented with the loan agreement?

19 A. It's on the website.

20 Q. So -- And when are they presented with the
21 loan agreement? Is it while the other verifications are
22 going on or when it -- when it -- is it only after the
23 verification of the income --

24 A. No.

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1 Q. Okay. And then when the Tribe's doing the --
2 or whoever's doing the verifications of the income,
3 employment, and bank account ownership information, are
4 they inputting that information into the TranDotCom
5 system?

6 A. Yes, I believe so. But as I said before, I
7 don't work specifically with that part of the process
8 and haven't. So I can't say for sure what gets put in
9 there and in what form.

10 Q. But are you aware of any field in the data
11 storage that TranDotCom information, if, like, income
12 verified, yes or no, or -- or something like that or do
13 you know how that information is stored?

14 A. I don't recall like a specific field, but
15 there -- I do believe there's some kind of flag or some
16 kind of indicator that -- that tells the person who's
17 doing the, you know, review and approval of it that that
18 verification was completed or needs to be completed.

19 Q. Is verification absolutely required in order
20 to fund the loan?

21 A. Yes.

22 Q. So if the verification process is not
23 completed for one reason or another, the loan will never
24 originate; is that your understanding?

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1 A. Yes.

2 Q. Do you know how many people on the travel
3 reservation were involved in that verification process?

4 MR. DUROCHER: Object to the form.

5 BY THE WITNESS:

6 A. I don't, and I imagine it varied from time to
7 time.

8 Q. But it was like a verification department or
9 something like that?

10 MR. DUROCHER: Object to the form.

11 BY THE WITNESS:

12 A. Yeah. More of an approval department. You
13 know, like I said, they do some verification via e-mail
14 but they also use a call center to do some things over
15 the phone.

16 Q. Is there a -- Do you know if there's
17 information that's stored in the database about whether
18 the call center was used or whether an e-mail was used
19 to verify?

20 A. I believe there is; but, again, I'm not sure
21 the exact format that that gets entered in there.

22 Q. And then is there information about, like,
23 which employee did the verification?

24 A. I guess, again, I'm not 100 percent certain

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1 Q. Do you know whether Bellicose or Sourcepoint
2 could sell any of Red Rock's assets?

3 A. I don't believe so. They're separate
4 companies.

5 Q. Do you know whether Bellicose or Sourcepoint
6 could waive Red Rock's sovereign immunity?

7 A. I'm almost certain no because I know that's a
8 very involved process. It involves approval from the
9 Tribal Council.

10 Q. Sourcepoint never made any lending decisions
11 on behalf of Red Rock, right?

12 A. No.

13 MR. ALBANESE: Objection, leading.

14 BY MR. WITSCH:

15 Q. Did Sourcepoint ever make any originating
16 decisions on behalf of Red Rock?

17 A. No.

18 Q. Did Sourcepoint ever collect on any Red Rock
19 loan?

20 A. No, I don't believe so.

21 Q. All of those decisions would ultimately be
22 made by Red Rock, right?

23 A. Yes.

24 MR. ALBANESE: Objection, leading.

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1 BY MR. WITSCH:

2 Q. Would Ms. Hazen ultimate- -- Strike that.

3 Would Ms. Hazen ordinarily review and approve
4 marketing materials?

5 A. Yes.

6 Q. How about the prescreening of credit reports?

7 A. Yes. Typically, if there's any change to
8 that, the -- the risk team would -- if the risk team was
9 proposing any change to that or the vendors that have
10 been used in the past, they would put together a
11 proposal of that that would be approved before it was
12 implemented.

13 Q. Did Sourcepoint have any access to Red Rock's
14 bank accounts?

15 A. I'm not sure.

16 Q. Do you know whether there were any deposit
17 access control agreements that would limit that?

18 A. I can't say for sure.

19 Q. Would you say that Mr. Martorello's
20 involvement in Red Rock decreased over time?

21 MR. DUROCHER: Object to the form.

22 BY THE WITNESS:

23 A. I mean -- Well, first of all, you know, he
24 worked with Bellicose VI and --

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1 Hazen -- I'm going to botch this name, I apologize --
2 but Ivelisse Morales and Chairman James Williams dated
3 October 30th, 2015, 10:54 a.m.

4 Did I read that correctly?

5 A. That's what it says.

6 Q. And what this looks like is the -- the type of
7 e-mail recommendation you would make.

8 Is that what's going on here?

9 MR. DUROCHER: Object, foundation.

10 BY THE WITNESS:

11 A. Yeah. I would say that this type of e-mail
12 would accompany or precede a formal recommendation
13 document like the one you were showing me just now.

14 Q. And you'd agree that Mr. Martorello is not
15 copied on this e-mail either, right?

16 A. I do.

17 Q. Would you typically --

18 MR. ALBANESE: Objection, leading.

19 BY MR. WITSCH:

20 Q. Would Mr. Martorello typically be
21 carbon-copied on this type of recommendation?

22 A. I guess can we just --

23 MR. DUROCHER: Object to the form.

24 BY THE WITNESS:

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1 A. I just want to make it clear that I do see
2 Justin Martorello is on this. So when you're saying
3 Mr. Martorello --

4 Q. Sorry. I should be clear. Let me rephrase,
5 then.

6 Mr. Martorello in this case being Mr. Matt
7 Martorello.

8 A. So -- So can you repeat the question.

9 Q. Sure. You wouldn't typically carbon copy Matt
10 Martorello on this type of recommendation?

11 MR. DUROCHER: Object to the form.

12 Go ahead.

13 BY THE WITNESS:

14 A. Yeah. He's not copied here.

15 Q. I think we can put this one to the side.

16 MR. DUROCHER: That was 26, right?

17 MR. WITSCH: That was 26, yes.

18 BY MR. WITSCH:

19 Q. Do you know whether Mr. Martorello delegated
20 authority to either Sourcepoint or Bellicose employees
21 over time?

22 A. I can't say for sure.

23 Q. You -- If you can't say for sure, but you
24 can't say that he wasn't doing that?

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1 A. I don't know.

2 Q. Were you involved in interfacing with any
3 regulators while you worked at Sourcepoint? Let me take
4 that question back because you didn't work at
5 Sourcepoint. You worked at Bellicose. Let me rephrase
6 the question.

7 When you worked at Bellicose, did you
8 interface with any regulators?

9 A. I don't recall specifically. I know that
10 there's a tribal financial services regulatory authority
11 that I may have been asked to provide information to
12 them from time to time, but I don't recall anything
13 specific.

14 Q. Were you involved at all in Bellicose's
15 compliance efforts?

16 A. Virtually everybody in the office was. I
17 mean, both at Bellicose and at Red Rock and Big Picture,
18 there's always been a very strong culture around making
19 sure that the -- the compliance is a theme throughout.

20 Q. Would you describe that culture?

21 A. You know, for example, on the recommendation
22 forms that we were just looking at before, you can see
23 they're signed off from compliance and signed off from
24 legal. So before any change or action was recommended

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1 or approved, you know, it was reviewed by the internal
2 people who specialize in that.

3 Q. When you say the people who specialize in
4 that, could you be a little more specific?

5 A. There's compliance. There's several
6 compliance people in the Ascension team who also worked
7 at Bellicose Capital before that. And there are
8 compliance specialists in the Big Picture Loans office.

9 Q. Was there a compliance board at Bellicose and
10 Sourcepoint?

11 A. There was.

12 Q. Do you know who was on it?

13 A. Again, it probably changed over time. I would
14 have thought -- I guess I shouldn't speculate, right?

15 Q. Do you remember anyone in particular who was
16 on the compliance board?

17 A. Not -- Not for certain.

18 Q. What generally did the compliance board do?

19 A. Review internal audits and actions taken by
20 the company and receive reports on whether, you know --
21 on whether the, I guess, procedures and actions in the
22 company were compliant with the internal policies.

23 Q. Were there efforts to ensure compliance with
24 federal and tribal law as well?

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1 A. I believe they did.

2 Q. Tell us a little bit more about that.

3 A. I believe they were participating in the
4 rule-making process for the CFPB's proposed regulations
5 or --

6 THE COURT REPORTER: What was that?

7 THE WITNESS: Sorry. I believe they were taking
8 part in the CFPB -- Consumer Financial Protection
9 Bureau's -- rule-making process for small dollar loans
10 that could have potentially applied to their business.

11 BY MR. ALBANESE:

12 Q. So it wasn't always Bellicose or Sourcepoint
13 that were interfacing with regulators?

14 A. No. It was many times Red Rock or Big Picture
15 independently.

16 Q. We learned earlier that you were involved in
17 the underwriting process at Bellicose and I wanted to
18 ask you a couple questions about that.

19 Do you know whether Red Rock could have
20 altered its underwriting procedures as an example by
21 tightening them without Bellicose or Sourcepoint's
22 approval?

23 A. Yes, I believe they could do that.

24 Q. What, if anything, could Bellicose and

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1 Sourcepoint have done about that?

2 A. Expressed distaste in it and make a
3 recommendation that they don't do that or -- or undo it
4 if they thought it was something that would be damaging
5 to the business.

6 Q. But it had no formal right to do anything more
7 than make a recommendation?

8 A. Not that I'm aware of.

9 Q. Did you ever go to LVD to meet with the people
10 at the Tribe?

11 A. Yeah, I've been there several times.

12 Q. When you say several, do you -- could you be a
13 little more specific?

14 A. More than five and less than ten.

15 Q. How would you -- With whom did you meet when
16 you went to LVD?

17 A. It varies depending on what the purpose of the
18 trip was. But usually in the Big Picture Loans or Red
19 Rock office with Shelly Hazen, their legal counsel, if
20 they were there, the Tribal Council, tribal government
21 sometimes was asking for, you know, information about
22 the performance of the business. And then just other
23 members of the Tribe that are connected. It's a very
24 small community -- tight-knit community. So once you're

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1 Bellicose Capital.

2 Q. I apologize. Let me try one more time.

3 Ascension plays the same role in origination
4 activities that Sourcepoint did?

5 A. Yes.

6 Q. And Sourcepoint -- Sorry.

7 Ascension as with Sourcepoint cannot
8 conduct orig- -- cannot originate a loan?

9 A. I would say -- Can is a -- is kind of
10 an interesting word there. They don't. That's not a
11 normal part of the business. It's as far as I know not
12 the plan of the business. But can can mean a lot of
13 different things.

14 Q. How would you describe Mr. Martorello's
15 involvement with the lending activity of Big Picture
16 after Bellicose and Sourcepoint were sold to the Tribe
17 in 2016?

18 A. My -- To my knowledge, very limited. I really
19 haven't seen them be involved on a day-to-day basis at
20 all. I can't speak about his interactions or lack
21 thereof with other people. But just me personally, I
22 haven't seen any day-to-day involvement whatsoever.
23 Just been limited to certain instances where the -- I
24 think the agreement between the sale agreement provides

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1 that they need to keep him apprised of certain potential
2 developments of the Tribe. But I think that's a pretty
3 normal condition of a seller finance agreement.

4 Q. You haven't spoken to Mr. Martorello about
5 business decisions since then, though, right?

6 A. No.

7 Q. Are you aware of Mr. Martorello making any
8 decisions on behalf of -- Let me take a step back.

9 If I refer to an entity called Tribal Economic
10 Development Holdings, LLC, as TED, will you understand
11 what I mean?

12 A. Yes.

13 Q. What is your understanding of what Tribal
14 Economic Development Holdings or TED is?

15 A. I understand that to be a business that's
16 owned by the Tribe that is ultimately the owner of Big
17 Picture and Ascension.

18 Q. Do you -- To the best of your knowledge, has
19 Mr. Martorello made any decisions on behalf of TED, Big
20 Picture, or Ascension since the sale?

21 A. I'm not aware of any.

22 Q. Do you know whether Mr. Martorello has
23 provided any consulting services to TED, Big Picture, or
24 Ascension since the sale?

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1 A. I'm not aware of any.

2 Q. Do you know whether Mr. Martorello has been
3 involved in finding any investors for TED, Big Picture,
4 or Ascension since the sale?

5 A. I'm not aware of any instance of that.

6 Q. Is it your understanding that Mr. Martorello's
7 role after the sale is that essentially of a creditor?

8 A. Yes.

9 Q. I'd like to just ask a little bit about your
10 time at Ascension.

11 I think you testified to this earlier, but I
12 just want to confirm before I ask you these questions.
13 Was your role at Ascension roughly the same as it was
14 when you were at Bellicose?

15 A. Yes, I would say so.

16 Q. Were you involved in marketing strategies at
17 Ascension?

18 A. Yes, to a similar extent that I was at
19 Bellicose. But in more recent, you know, time, there's
20 a marketing team that Ascension has and taken on more of
21 that.

22 Q. Mr. Martorello, though, wouldn't have been
23 involved in this decision?

24 A. Not to my knowledge, no.

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1 Q. Now, were you inv- -- Sorry.

2 Were you involved in developing underwriting
3 criteria at Ascension?

4 A. Not -- Not really after the -- Ascension.

5 There's a team that works on that.

6 Q. Mr. Martorello, though, wouldn't have been
7 involved in this?

8 A. Not to -- Not to my knowledge, no.

9 Q. Did you make -- did you -- Were you involved
10 in making any suggested changes to policies to Big
11 Picture while you worked at Ascension?

12 A. Yes. From time to time, they would give us
13 policies to review and comment on to see if it made
14 sense for any update. And that was pretty common
15 practice, that many people throughout the company would
16 review them and offer feedback to see if it made -- you
17 know, there were any edits that were required.

18 Q. But Mr. Martorello wouldn't have been involved
19 in any of those decisions?

20 A. No.

21 Q. Were you involved in suggesting any changes to
22 Big Picture's website or e-mail campaigns while you
23 worked at Ascension?

24 A. I can't remember specific instances, but

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12 I, JAMES V. DOWD, state that I have read the
13 foregoing transcript of the testimony given by me at my
14 deposition on the 13th day of November, 2018, and that
15 said transcript constitutes a true and correct record of
16 the testimony given by me at the said deposition except
17 as I have so indicated on the errata sheets provided
18 herein.

JAMES V. DOWD

22 SUBSCRIBED AND SWEARN to
23 before me this _____ day
of _____, 2018.

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1

2 UNITED STATES OF AMERICA)
3 EASTERN DISTRICT OF VIRGINIA)
4 RICHMOND DIVISION)

5

6 I, Melanie E. Kubiak, Certified Shorthand
7 Reporter, do hereby certify that JAMES V. DOWD was first
8 duly sworn by me to testify to the whole truth and that
9 the above videotaped deposition was reported
10 stenographically by me and reduced to typewriting under
11 my personal direction.

12 I further certify that the said videotaped
13 deposition was taken at the time and place specified and
14 that the taking of said deposition commenced on the
15 13th day of November, 2018, at 9:05 a.m.

16 I further certify that I am not a relative or
17 employee or attorney or counsel of any of the parties,
18 nor a relative or employee of such attorney or counsel,
19 nor financially interested directly or indirectly in
20 this action.

21

22

23

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1 In witness whereof, I have hereunto set my
2 hand this 16th of November, 2018.

Philippe E. Berger

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CSR NO. 084-004794